

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:
July 28, 2014

Cooperative
Trustees
Plan
X
Date A

Dear :

This is in reply to a request for a ruling on behalf of the Cooperative, represented to be exempt from tax under section 501(c)(12) of the Internal Revenue Code ("Code"), concerning whether the Plan will continue to meet the requirements of section 457(e)(12), as a plan providing for nonelective deferred compensation for services not performed as an employee, following the proposed amendment to the Plan as described below.

The Cooperative previously established and currently maintains the Plan, which is designed and represented to qualify as a nonelective, nonqualified deferred compensation plan within the meaning of section 457(e)(12), to provide retirement benefits to the Trustees of the Cooperative. The Plan provides that any Trustee who serves a minimum of X years on the Board (initial service requirement) is eligible to participate in the Plan. The Trustees work as independent contractors for the Cooperative and are not considered to be employees of the Cooperative. There are no individual variations or options under the Plan.

The Cooperative proposes to amend the Plan to freeze participation in the Plan so that any Trustee who has not yet completed the initial service requirement of X years of service on the Board as of Date A is not eligible for benefits under the Plan. However, the amendment does not affect the benefit entitlement of those Trustees who have already completed the initial service requirement on the Board as of Date A.

Section 457 of the Code contains rules for the taxation of deferred compensation plans of state and local governments and tax-exempt organizations. If a plan complies with section 457, compensation deferred under the plan will not be included in income until the year is paid or otherwise made available.

Section 457(e)(12) of the Code exempts a plan from section 457 if it provides nonelective deferred compensation for services not performed as an employee. The compensation shall be treated as nonelective only if all individuals with the same relationship to the payor (other than those who have not satisfied any applicable initial service requirements) are covered under the same plan with no individual variations or options under the plan.

Section 1.457-2(k)(1) of the Income Tax Regulations provides that the term plan does not include (and section 457 of the Code and sections 1.457-2 through 1.457-11 of the regulations do not apply to) any nonelective deferred compensation under which all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship with the eligible employer are covered under the same plan with no individual variations or options under the plan as described in section 457(e)(12), but only to the extent the compensation is attributable to services performed as an independent contractor.

Under the proposed amendment, the Plan will continue to apply to all Trustees who have met the applicable initial service requirement under the Plan by providing X years of service as of Date A. After Date A, those Trustees who have not met the initial service requirement will not be eligible to participate in the Plan. After Date A, all individuals with the same relationship to the eligible employer will be covered under the same plan with no individual variations or options under the Plan. Accordingly, the proposed amendment to freeze participation under the plan will not violate the requirements of section 457(e)(12), and section 457 will continue to be inapplicable to the deferred compensation under the Plan with respect to the Trustees participating in the Plan as of Date A. The terms of the Plan are clear that the initial service requirement is objective and not being used to provide individual variations or options under the Plan.

This ruling concerns only the effect of the amendment. No opinion is expressed with regard to the timing of inclusion in income of amounts deferred under the Plan. This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent. Moreover, if the Plan is significantly amended, this ruling may no longer apply.

No opinion is expressed or implied concerning the tax consequences of the proposed transactions under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no

opinion is expressed or implied concerning the application of section 409A to the proposed transactions. Section 409A has been designated as an area in which ruling letters will not be issued until the Service resolves the issues through publication of a Revenue Ruling, Revenue Procedure, Regulations or otherwise. See section 3.01(52) of Revenue Procedure 2014-3, 2014-1 I.R.B. 111, 115. The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Cheryl E. Press
Senior Counsel, Qualified Plans Branch 2
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure: Copy for section 6110 purposes